

January 23, 2002

Mary Cottrell, Secretary
Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, MA 02110

RE: The Berkshire Gas Company, D.T.E. 01-56

Dear Secretary Cottrell:

On January 11, 2002, the Attorney General filed a timely motion to strike sections of the Reply Brief of the Berkshire Gas Company ("Berkshire" or "Company"). In its January 17, 2002 opposition, Berkshire argues that the Attorney General's motion should be "dismissed as unacceptably late" since the Attorney General did not file this motion within fourteen days of the filing of the Company's Reply Brief. The Department should disregard this argument that has no support in either the Department's regulations or the decision cited by the Company.

The Department regulation entitled "Motions" receives no mention by the Company. That regulation lists the general requirements for filing motions and does not impose a "14 day rule" on motions to strike:

General. An application of the Department to take any actions or to enter any order after the initial pleading or after commencement of an investigation by the Department shall be by motion which, unless made during a hearing, shall be made in writing, shall state specifically the grounds thereof, and shall set forth the action or order sought. A copy of all motions made in writing, or reduced to writing at the request of the Commission, shall be served upon all persons entitled thereto in accordance with 220 C.M.R. 1.05(1).

220 C.M.R. §104(5)(a). The Attorney General's motion easily satisfies the express requirements

imposed by this regulation.

To support its “14 day rule” on motions to strike, the Company cites 222 C.M.R. §§ 104 (2) and 1.11 (8). Section 104 addresses answers to petitions filed with the Department and reads, in full, “Answer. Except where a different period is specified, any pleading within 14 days after service of the document to which the answer is directed.” The Attorney General filed a *motion* in response to the Company’s Reply Brief, not an *answer* in response to Berkshire’s July 17, 2001, rate petition. Section 104(2), therefore, does not govern the timing of filing motions to strike.

The other regulation cited by the Company, 222 C.M.R. § 1.11(8), addresses reopening of hearings to present additional evidence. Section 1.11(8) contains no time limit of any sort for requesting reopening of the record. In any event, this rule clearly has no bearing on a motion to strike.

Finally, the Company cites *New England Telephone and Telegraph Company d/b/a Bell Atlantic Massachusetts*, D.T.E. 98-15 (Phase I), March 19, 1999, Interlocutory Decision. In that decision, however, the Department struck a party’s Initial Brief filed after the deadline set by the procedural schedule. The decision, which addresses late filed briefs, does not impose a “14 day rule” for filing motions to strike.

The Attorney General filed a motion to strike only after he had tried, without success, to resolve some of the issues presented by the motion voluntarily and amicably with the Company. Given the complex nature of the case and the fact that Berkshire had ample opportunity to respond to the motion, the Company can not claim unfair surprise. The Department should reject the Company’s proposed “14 day rule” on motions to strike.

Sincerely,

Alexander J. Cochis
Assistant Attorney General

cc: service list